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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,011	03/02/2004	Jeffrey A. Meunier	10886.00632	1288
22908 7590 12/23/2008 BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606				
EXAMINER				
LE, HUYEN D				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
12/23/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/791,011

**Applicant(s)**

MEUNIER ET AL.

**Examiner**

HUYEN D. LE

**Art Unit**

2614

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50, 53 and 54 is/are rejected.
- 7) ☒ Claim(s) 51 and 52 is/are objected to.
- 8) ☒ Claim(s) 55 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date 12/17/08 & 9/15/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 12/17/08 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

The International Search Report for PCT/US2004/006394 in the Non-Patent Literature documents filed 12/17/08 has not been considered since it is not placed in the record.

### ***Election/Restrictions***

2. Newly submitted claim 55 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The original claim does not claim a communication headset with a first microphone and a second microphone configured to receive a local environment sound and to add an adjustable level of the local environment to the earpiece as now claimed in claim 55.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 55 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-50, 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. (U.S. patent 5,761,298).

Regarding claims 1-2, 13, 24, 48 and 50, Davis et al. teaches a communications headset which comprises a housing (32) having a speaker driver (113), a nozzle (112, 46, figure 3A), and an acoustically isolating ear piece (46, figures 4, 5 and col. 6, lines 41-46) coupled to the nozzle (figures 3A, 3B).

Davis does not specifically teach the nozzle (112, 46) for insertion into an ear canal and the earpiece being conformable within the ear canal. However, Davis does teach that the earbud (46) connecting the acoustic channel (112, figure 3A) is inserted in front of the ear canal for blocking external noises from entering the ear canal (col. 8, lines 61-65).

Since Davis does not restrict to the size for the ear bud (col. 6, lines 43-44), it therefore would have been obvious to one skilled in the art to provide any sizes for the earbud (46) such as the size for inserting into the ear canal or being conformable within the ear canal for more securing the nozzle (112, 46) to the ear of the wearer, better blocking external noises from entering the ear canal, and depending on the user's preference (col. 6, lines 37-39 and 41-46 and col. 8, lines 61-65).

Further, Davis does not specifically teach that the earpiece (46) and the housing (32) provide at least 15dB of acoustic isolation as claimed. However, Davis does not restrict to the configurations and sizes for the ear piece (46); it therefore would have been obvious to one skilled in the art to provide any configurations and sizes for the earpiece (46) such as the configuration for providing acoustic isolation at least 15 dB or in the range of 15 to 25 dB from ambient sound over the range of audible frequencies for the user's preference and providing the improved frequency characteristics.

In addition to claim 50, Davis teaches one headset that comprise the first housing, the first nozzle, the first acoustically ear piece and the microphone as mentioned above. Davis does not teach a second housing, a second nozzle and the second earpiece as claimed. However, it would have been obvious to one skilled in the art to provide another headset which comprises a second housing, a second nozzle and the second earpiece for providing more headsets to the wearer.

Regarding claims 3-6, 26-27 and 40-43, Davis teaches the ear piece (46) that comprises the openings and a flexible material as claimed (figure 3A, 4, 5 col. 6, lines 37-43).

Regarding claims 7-8, Davis teaches a boom assembly as claimed (16, 17, 18, 20, figures 12, 3A).

Regarding claims 9 and 32, Davis shows the longitudinal direction of the boom assembly defining a first axis and the longitudinal direction of the nozzle defining a second axis. As shown in figures 1 and 3A, the first axis and the second axis intersect and define an angle in a first plane.

Regarding claims 10-15 and 33-38, Davis does not specifically disclose the first angle in a first plane, a second plane and a second angle in the range as claimed. However, Davis does not restrict to any angle for the first axis and second axis, and the boom assembly and the receiver enclosure are adjustable; it therefore would have been obvious to one skilled in the art to provide any angle for the first axis of the boom assembly and second axis of the nozzle (46, 112) such as about 77 and 97 degrees or about 87 degrees, or the second angle of between 23 and about 43 degrees or 33 degrees for better fitting to the ear of the wearer (figures 1, 2, 3A, col. 2, lines 49-66).

Regarding claims 16, 19-21 and 39, Davis shows a cable (40) as claimed (figures 1, 3A, 3B).

Regarding claims 17 and 46, Davis shows a flexible ear support (13).

Regarding claims 18 and 47, Davis does not specifically disclose that the earpiece (46) solely supports the headset on the user. However, providing an earpiece solely supporting the headset on the user is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide the headset of Davis which is solely supported by the earpiece (46) for a compact and lightweight headset.

Regarding claims 22-23, Davis teaches the microphone is directional microphone or selected from the group as claimed (col. 5, lines 60-62).

Regarding claims 25 and 49, Davis shows the microphone (102) which is isolated from the driver signal of the transducer (113).

Regarding claims 28, Davis et al. teaches a communications headset which comprises a housing (32) having a speaker driver (113), a nozzle (112, 46, figure 3A), and an acoustically isolating ear piece (46, figures 4, 5 and col. 6, lines 41-46) coupled to the nozzle (figures 3A, 3B). Davis further shows a first axis, a second axis and a third axis (figures 1, 2, 3A, 3B), a boom (16, 17, 20) and a directional microphone (col. 5, lines 60-62) as claimed.

Davis does not specifically teach the nozzle (112, 46) for insertion into an ear canal and the earpiece being conformable within the ear canal. However, Davis does teach that the earbud (46) connecting the acoustic channel (112, figure 3A) is inserted in front of the ear canal for blocking external noises from entering the ear canal (col. 8, lines 61-65).

Since Davis does not restrict to the size for the ear bud (col. 6, lines 43-44), it therefore would have been obvious to one skilled in the art to provide any sizes for the earbud (46) such as the size for inserting into the ear canal or being conformable within the ear canal for more securing the nozzle (112, 46) to the ear of the wearer, better blocking external noises from entering the ear canal and depending on the user's preference (col. 6, lines 37-39 and col. 8, lines 61-65).

Regarding claim 29, Davis shows a cable (40) as claimed (figures 1, 3A, 3B).

Regarding claims 30-31, Davis shows the boom (16, 17, 20) as claimed.

Regarding claims 44 and 45, Davis does not specifically teach that the earpiece (46) and the housing (32) provide at least 15dB of acoustic isolation as claimed. However, Davis does not restrict to the configurations and sizes for the ear piece (46); it therefore would have been obvious to one skilled in the art to provide any configurations and sizes for the earpiece (46) such as the configuration for providing acoustic isolation at least 15 dB or in the range of 15 to 25 dB from ambient sound over the range of audible frequencies for providing the improved frequency characteristics to the device.

Regarding claim 53, Davis shows an ear support (12, 13) attached to the housing (32) allowing a user to interchangeably wear the communication headset without rotating the housing.

Regarding claim 54, Davis teaches the communication headset being adaptable for use either on a left ear or a right ear (col. 2, lines 63-66).

#### ***Allowable Subject Matter***

5. Claims 51-52 have been allowed.

#### ***Response to Arguments***

6. Applicant's arguments filed 9/15/08 have been fully considered but they are not persuasive.

Responding to the arguments about the ear bud or the ear piece (46) inserting the ear canal, the examiner has explained in detail in the Office Action. The Applicant should note that Davis does teach and show the ear piece (46) being inserted into the ear. Further, Davis does not restrict to the sizes and the configurations for the ear piece (col. 6, lines 37-39 and col. 8, lines



61-65); it therefore would have been obvious to one skilled in the art to provide any sizes for the earbud (46) such as the size for inserting into the ear canal or being conformable within the ear canal for more securing the nozzle (112, 46) to the ear of the wearer, better blocking external noises from entering the ear canal and depending on the user's preference (col. 6, lines 37-39 and col. 8, lines 61-65).

Davis does not specifically teach that the earpiece (46) and the housing (32) provide at least 15dB of acoustic isolation as claimed in claim 1. However, Davis does not restrict to the sizes and configurations for the ear piece (46); it therefore would have been obvious to one skilled in the art to provide any configurations and sizes for the earpiece (46) such as the configuration for providing acoustic isolation at least 15 dB or in the range of 15 to 25 dB from ambient sound over the range of audible frequencies for the user's preference and providing the improved frequency characteristics.

Responding to the arguments about claims 16 and 39, as broadly claimed, Davis shows the first axis of the boom assembly, the second axis of axis of the nozzle and the third axis of the cable (40) are coplanar as claimed (figures 1, 3A, 3B). Further, the Applicant should note that Davis does show the cable that cooperates with the earpiece (32, 46) to support the communication headset (12) on the user (see figure 1), or it is obvious that the cable (40) cooperates with the earpiece to support the communication headset (12) on the user (see figure 1) since the cable (40) is connected and positioned behind the ear hook (13).

Responding to the arguments about claims 18 and 46, as mentioned in the Office Action, it is very well known in the art to provide the earpiece that solely supports the communication headset on the user (the Applicant should also note the Bryant headset (US 3,440,365)).

Therefore, it would have been obvious to one skilled in the art to provide the headset of Davis which is solely supported by the earpiece (46) for a compact and lightweight headset.

Responding to the arguments about claims 24 and 48, the examiner refers to the Office Action. Further, it is obvious that at least some ambient sound is electronically transmitted to the driver (113) since the communication headset (12) containing a microphone and a receiver can receive and transmit the sound waves.

Responding to the arguments about claims 25, 29 and 49, the examiner refers to the Office Action, the Applicant should note that Davis does show a microphone (102,) and a cable (40) as claimed (figures 1, 3A, 3B).

The rejections of claims 1, 3, 18 and 26 over the Bryant reference have been dropped.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/  
Primary Examiner, Art Unit 2614

HL  
December 21, 2008